

Message

From: Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]
Sent: 12/8/2018 1:03:01 AM
To: Green, Douglas H. [DHGreen@Venable.com]
Subject: RE: IPL and CCR beneficial use

Hi, Doug. My apologies for not acknowledging receipt of your request or being able to return your missed call. I am not yet in the position to provide a substantive response to your email, although I think requesting a meeting with Steven makes sense. I would be glad to discuss further next week; Monday after 6:00 pm or Tuesday from 8:00-8:30, 12:30-1 or after 6:00 currently would work for me. Thank you.

Best,

David

David Fotouhi

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From: Green, Douglas H. <DHGreen@Venable.com>
Sent: Friday, December 7, 2018 5:38 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: RE: IPL and CCR beneficial use

Hi David – apologies for another email, but I’m just touching base on our whether the message below is something you think you will be able to respond affirmatively to, or whether there is something you think you can respond to via an email to help push this matter along. If not, understood and IPL may pursue trying to arrange a meeting with Steven Cook to get resolution, but, as we discussed earlier, some type of email response from EPA may provide interim relief until such time as EPA addresses the correction in the appropriate Federal Register.

Thanks again. Doug

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From: Green, Douglas H.
Sent: Wednesday, November 28, 2018 5:36 PM
To: 'Fotouhi, David' <Fotouhi.David@epa.gov>
Subject: IPL and CCR beneficial use

Hi David – this is a follow-up to our earlier calls and IPL’s letter of November 1, 2018 requesting EPA to correct the erroneous preamble statement in the proposed Phase One CCR rulemaking that CCR meeting the

rule's beneficial use criteria cannot be used in closing CCR impoundments. As that letter details, the preamble statement is at odds with the plain text of the CCR rule which makes clear that, provided CCR is used in a manner meeting the rule's beneficial use criteria (including meeting the fourth criterion demonstrating that such use will be protective of human health and the environment), the beneficial use of CCR is not subject to the CCR rule and such CCR can be used to close impoundments, including those subject to forced closure.

We understand that EPA's Office of General Counsel concurs with the legal position set forth in the IPL letter and that the Agency is evaluating the appropriate mechanism for formally correcting the erroneous preamble statement, including possibly making this formal correction in the anticipated Phase 2 CCR proposal. IPL continues to encourage EPA to do so as soon as possible.

However, pending this action and to avoid IPL continuing to needlessly forego the beneficial use of CCR to close its units and instead mine borrow soil to serve the same purpose, we ask that your office reply to this email confirming that EPA concurs with the position set forth IPL's letter. Thank you for helping to correct an erroneous position and to assisting in encouraging the environmentally protective beneficial use of CCR.

Please contact me with questions.

Regards, Doug Green

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